MOTIF UNIK SDN BHD

v.

KHOO AH SOON & ANOR

HIGH COURT MALAYA, PENANG
VARGHESE GEORGE JC
[ORIGINATING MOTION NO: 25-71-2010]
3 MARCH 2011

LAND LAW: *Registrar's caveat - Application for removal of caveat - Registrar entered caveat on lands at request of police - Landowner's application to cancel was rejected - Whether ground for entry of caveat fell within s. 320(1)(a) National Land Code (NLC) - Whether entry of caveat 'to prevent fraud or improper dealing' must relate to 'dealing' as defined in NLC - Whether Registrar failed to objectively evaluate relevant considerations in rejecting landowner's application - Whether any valid basis in law or fact for caveat to remain - National Land Code, ss. 320, 321, 418*

The second respondent had entered a Registrar's Caveat ('the caveat') on 22 lots of land ('the lands') owned by the applicant at the request of the Police Commercial Crimes Investigation Department. The request was made in connection with a police report made 13 years earlier by the first respondent ('Khoo') concerning an allegation of falsification of an affidavit in a civil claim. Khoo had complained to police that certain parties had breached a restraining order he had obtained from court and disposed of the lands to third parties. He told the police that he had been cheated and requested them to prevent further dealings in the lands and to bring the wrong-doers to book. However, two civil suits that Khoo had brought against the parties he alleged had cheated him were either dismissed or struck off, the trial court in one instance holding that he was never an actual purchaser but only a broker. When the applicant's application to the second respondent to cancel the caveat was rejected, it filed the instant appeal to the court under s. 418 of the National Land Code ('NLC') for an order directing the second respondent to remove the caveat and an order restraining Khoo, his servants and/or agents from lodging or causing to be lodged any further caveats on the lands.

Held (allowing the appeal with costs):

(1) There was no valid basis in law or any justification on the facts for the caveat to be maintained. (para 39)

(2) Section 320(1)(a) of the NLC enabling a Registrar's Caveat to be entered "for the prevention of fraud or improper dealing" must be read to mean 'fraud in respect of any dealing' or some 'improper

dealing' in respect of the land itself – 'dealing' in the context of the NLC having a special meaning as defined in s. 5 thereof. It related to instruments, forms, process of registration etc. related to transfers, charges, leases and tenancies, easements, liens and caveats on land. It was not intended to be available for all and diverse kinds of fraud or cheating in its widest compass. In the instant case, the declared ground for the entry of the caveat was "penipuan dan pemalsuan afidavit" related to a civil proceeding. The alleged or claimed 'cheating or falsification' was related to an 'affidavit'. This did not qualify to be 'for the prevention of fraud or improper dealing'. (paras 27 & 28)

(3) The second respondent did not apply his mind to and objectively evaluate all relevant considerations in refusing to cancel the caveat upon the applicant's application. If he had done so by asking the right questions and weighing the facts presented, the caveat would and ought to have been cancelled. (para 32)

(4) When addressing the question whether the Registrar's Caveat needed to be continued or to be cancelled, the second respondent was required to apply his mind as to whether the caveat was 'necessary and desirable' and strictly for the purposes spelt out in sub-s. (a), (b), (ba) or (c) of s. 320(1) of the NLC. His role was not a mechanical one and it was not enough for him to merely state the caveat was entered at the request of the police and since the police had not withdrawn the request, he was not in a position to cancel the caveat. (paras 21 & 24)

Case(s) referred to:

Lim Ah Hun v. Pendaftar Hakmilik Tanah, Pulau Pinang & Anor [1990] 2 CLJ 640; [1990] 2 CLJ (Rep) 369 HC ***(refd)***

Pendaftar Hakmilik Negeri Kedah v. Overseas-Chinese Banking Corp Ltd [1991] 2 CLJ 1105; [1991] 1 CLJ (Rep) 351 SC ***(refd)***

Shobhana Jigarlal Doshi v. Pendaftar Hakmilik Tanah dan Galian Johor dan Pihak Ketiga [1995] 1 LNS 455 HC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13

National Land Code, ss. 5, 319, 320(1)(a), (b), (ba), (c), 321, 417, 418

Rules of the High Court 1980, O. 55 r. 13(1)

For the plaintiff - Daphne Choy; M/s Chow & Assocs
For the 1st respondent - Surendren Suppiah; M/s Surendran Suppiah & Assocs
For the 2nd respondent - Mohd Ilmami; FC

Reported by Ashok Kumar

JUDGMENT

Varghese George JC:

Brief Description Of The Application Before The Court

[1] The application by way of Originating Motion by Motif Unik Sdn Bhd (In Liquidation) was for an order to the Pendaftar Hakmilik Tanah, Pulau Pinang (the 2nd respondent) to remove the Registrar's Caveat that had been lodged on or about 7 June 2010 against 22 lots of land owned by the applicant. There was also a prayer for a restraining order to be made against Khoo Ah Soon (the 1st respondent) from lodging or causing to be lodged any further caveat against the said lots.

[2] The Registrar's Caveat that was sought to be removed had been entered by the 2nd respondent pursuant to s. 320 of the National Land Code (NLC) on the grounds (alasan) stated in Borang 19F thereto as follows:

> Satu pengaduan telah dibuat oleh penama Khoo Ah Soon berkaitan dengan satu kes penipuan dan pemalsuan afidavit dalam proses tuntutan kes sivil.

[3] The aforesaid Registrar's Caveat as it transpired had been entered by the 2nd respondent on the written request (4 June 2010) of ACP Roslee Hj Chik of Jabatan Siasatan Jenayah Komersial, Ibu Pejabat Polis Kontigen, Pulau Pinang which referred to a 'pengaduan' made by the 1st respondent *vide* Lebuh Pantai Report 1046/97 (exh. AY1 in afidavit sokongan of Datuk Mohd Anwar b. Yahya) (encl. 2).

Background

[4] The lots in question had been transferred from one Sungei Bakau Realty Sdn Bhd (SBR) to the applicant on 28 March 1997 and on the same day were charged to Hong Leong Finance Berhad (now known as Hong Leong Bank Berhad) as security for banking facilities. (SBR was previously known as Ooi Kar Seng (Properties) Sdn Bhd).

[5] Prior to 1997, sometime in 1994 the 1st respondent had brought against SBR (in its previous name) a civil suit *vide* Guaman Sivil No. 11-193-1994 (1994 Civil Suit) and had apparently also obtained certain restraining orders and orders for extension of caveats then entered against the said lots.

[6] After a full trial, the High Court had on 4 February 1997 dismissed the 1st respondent's 1994 Civil Suit which *inter alia*, was for specific performance of an alleged contract. The court further directed that the caveats entered against the said lots by the 1st respondent be

removed. In his grounds of decision (24 June 1997), Abdul Hamid bin Haji Mohamad J (as His Lordship then was) most emphatically said as follows:

> It is my finding of fact that the plaintiff was not the "actual purchaser". He was a broker, nothing else.

The plaintiff referred to there was the 1st respondent here.

(Counsel for the 1st respondent confirmed that the 1st respondent's appeal against that decision in the 1994 Civil Suit was subsequently withdrawn by the 1st respondent and that proceedings was deemed concluded as between the parties.)

[7] On 25 June 1997, the 1st respondent instituted another action, this time *vide* Guaman Sivil No: 22-213-1997 (1997 Civil Suit) against various parties, including SBR and the applicant in this Originating Motion (the 1st and 7th defendants there). However, on 4 March 1998 on the application of SBR and the applicant herein, the court ordered that the writ and statement of claim in the 1997 Civil Suit to be struck out as against them. There was no appeal against this striking out by the 1st respondent.

[8] Subsequently in 2010, by an application filed in May 2010 in the 1997 Civil Suit the 1st respondent attempted to reinstate the 1997 Civil Suit against all of the defendants there (as it would appear) but the High Court on 14 October 2010 dismissed the said 1st respondent's application. The 1st respondent has now appealed to the Court of Appeal against the said decision and that appeal was still pending.

[9] Reverting now to the Police Report No: 1046/97, it was not disputed that this report was lodged by the 1st respondent on 19 May 1997. The Jabatan Siasatan Komersial, Ibu Pejabat Polis Kontigen, Pulau Pinang appear to only have written to the 2nd respondent to enter a Registrar's Caveat against the said lots on 4 June 2010, that is, some thirteen (13) years after the police report was originally made by the 1st respondent.

It cannot escape attention also that the police's request for entry of a Registrar's Caveat transpired at about the time the 1st respondent was attempting to reinstate this 1997 Civil Suit which had been previously struck out as against SBR and the applicant. It is not disputed that the 1st respondent in this attempt to reinstate the 1997 Civil Suit had also alleged that the police had obtained 'fresh evidence' and had reopened related investigations.

[10] The first response of Jabatan Siasatan Jenayah Komersial to the enquiry by the applicant as to whether new evidence had indeed surfaced and for the status of the related investigation, was found in the Jabatan's letter of 22 July 2010 to solicitors for the applicant in the following terms:

> Pihak polis sedang menjalankan siasatan di bawah seksyen 420 Kanun Keseksaan bersangkut repot Lebuh Pantai rpt :1046/97.

The solicitors for the applicant, not satisfied with this rather general response to a specific query, wrote again to the Jabatan Siasatan Jenayah Komersial on 5 October 2010 (exh. AY2 to encl. 6 - afidavit balasan of applicant). No reply appears to have been forthcoming, from Jabatan Siasatan Jenayah Komersial, Pulau Pinang.

[11] From the Bar, learned senior federal counsel for the 2nd respondent informed the court on 16 February 2011, that they had received a further letter from the police dated 11 February 2011 which stated that "Kes/laporan polis masih dalam siasatan".

As it did appear, the 1st respondent was even required to attend at the Jabatan Siasatan Jenayah Komersial on 2 December 2010 to provide further evidence and give his statement. However, the police chose to be non-committal as to the progress of the investigation.

Preliminary Objections By 1st Respondent

[12] The 1st respondent raised three preliminary objections to this proceeding by the applicant. They were:

(a) That this application was not in the nature of an 'appeal' as it ought to be, against the refusal of the 2nd defendant to cancel the Registrar's Caveat;

(b) That the mode of commencement of action - Originating Motion as used by the plaintiff in respect of this proceedings - was not the correct procedure; and

(c) The plaintiff ought to have named and included the police (Jabatan Siasatan Jenayah Komersial) as a party in this proceeding.

I found no merits in all the said three preliminary objections.

It Was An Appeal

[13] There was no doubt in my mind that this was indeed an appeal brought pursuant to s. 418 of the NLC.

Section 418 is as follows:

> Section 418. (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereof as it considers just.
>
> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

That this was an appeal against the 2nd respondent's refusal to cancel the Registrar's Caveat is obvious from a perusal of the **Notis Usul Pemula** itself. The intitulement to the Origination Motion ('Dalam perkara ss. 302(1), 319, 320, 417 and 418 Kanun Tanah Negara, 1965') makes specific reference to s. 418 of the NLC. Furthermore, further down in the body of the process-paper, it is expressly set out as follows:

> DAN SELANJUTNYA AMBIL PERHATIAN bahawa alasan-alasan permohonan ini **dan rayuan di bawah s. 418,** Kanun Tanah Negara, 1965, adalah seperti berikut …
>
> (emphasis added)

[14] There was also confirmation by the 2nd respondent in the affidavit affirmed by Norbiha Salasiah binti Busu on 22 September 2010 that the applicant had through its solicitors first applied for the cancellation of the Registrar's Caveat (para. 8 of encl. 4) and the 2nd respondent had declined to do so.

Originating Motion Was Right Procedure

[15] As regards the right procedure to be adopted to bring an appeal against the 2nd respondent's decision not to cancel the Registrar's Caveat, one is guided by O. 55 r. 13(1) of the Rules of the High Court 1980, which read as follows:

> Where under any written law an appeal lies from any decision of any person or body of persons to the High Court such appeal shall be made to the High Court in the State where the decision was given by motion setting out the grounds of appeal, supported by affidavit and, if the court so directs at the hearing, by oral evidence.

[16] Haider J (as His Lordship then was) in *Shobana Jigarlal Doshi v. Pendaftar Hakmilik Tanah dan Galian Johor dan Pihak Ketiga* [1995] 1 LNS 455, had occasion to elaborate on the appropriate procedure to be adopted in such cases, in the following terms:

> ... the proper way to appeal against a decision or an order of the Registrar was provided under s. 418(2) of the NLC read together with O. 55 r. 13(1) of the RHC, 1980 that is **by way of a motion and not an originating summons**. The procedure was exclusive. In filing a motion, it was necessary to state the reasons for appealing supported by an affidavit and oral evidence, if it was directed by the court.

Police Was Not A Necessary Party To Be Included In This Proceeding

[17] I was not persuaded either that the "police" (who had applied for the Registrar's Caveat to be entered) was a necessary party to have been named and included in this proceeding by the applicant or that the failure to do was fatal to this appeal.

This was an appeal against the 2nd respondent's refusal to cancel the Registrar's Caveat.

As noted earlier (see para. 2 above) the grounds for the entry of the Registrar's Caveat in the relevant Borang 19F in the first place did not make any reference to the "police" at all. It only refers to "satu pengaduan telah dibuat oleh penama Khoo Ah Soon ..." It was for the 2nd respondent and/or the 1st respondent to justify why the Registrar's Caveat should be still maintained against the said lots of land ...

If at all, the 'police' were necessary to lend support to the maintenance of the Registrar's Caveat, I would hold that, the 1st and/or 2nd respondents (and not the applicant) should have applied to include the police as an additional party.

[18] In any event, I do not for a moment believe that the inclusion of the 'police' as a further party would have been useful or necessary for determining this appeal. It was the decision of the 2nd respondent that was being challenged and the reasons for such refusal to cancel the Registrar's Caveat either on a subjective or objective test, as the case may be, had to be established by the 2nd respondent alone, to the satisfaction of the court.

Core Issue

[19] The core or real issue that had to be determined in this application by the applicant was whether the 2nd respondent was right in law and on the facts, in refusing to cancel the Registrar's Caveat upon the application of the applicant.

[20] The relevant provisions in the NLC that govern the entry and cancellation of a Registrar's Caveat is found in ss. 320 and 321 of the Code, which are reproduced in full here below:

> Section 320. (1) Subject to sub-s. (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable:
>
> (a) for the prevention of fraud or improper dealing; or
>
> (b) for protecting the interests of:
>
> (i) the Federation or the State Authority, or
>
> (ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or
>
> (ba) for securing that the land will be available to satisfy the whole or part of any debt due to the Federation or the State Authority, whether such debt is secured or unsecured and whether or not judgment thereon has been obtained; or
>
> (c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.
>
> Section 321. (1) A Registrar's caveat shall be in Form 19F and the entry of a Registrar's caveat on any document of title shall be effected by the endorsement thereon, under the hand and seal of the Registrar, of the words "Registrar's Caveat Entered", together with a statement of the time of entry.
>
> (2) As soon as may be after the entry of any such caveat, the Registrar shall serve upon the proprietor of the land and any person or body having a registered interest in the land thereby affected a notification in Form 19A.
>
> (3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar:
>
> (a) of his own motion; or
>
> (b) on an application in that behalf by the proprietor of the land affected; or
>
> (c) pursuant to any order of the Court made on an appeal under s. 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under para. (b).

(4) Where the Registrar effects a cancellation under sub-s. (3), the Registrar:

(a) if he is acting under para. (a) of that subsection, shall notify the proprietor of the land and any person or body having a registered interest in the land affected; and

(b) in all cases, shall make a note under his hand and seal of the date of the cancellation.

Registrar Must Be Satisfied Objectively

[21] A Registrar's Caveat may be entered wherever such appears to the Registrar to be necessary and desirable, and in so far as is relevant to this case;

(a) for the prevention of fraud or improper dealing.

Firstly, as is explicit from the provisions of the Code, it requires the Registrar to apply his or her mind as to whether such a Registrar's Caveat is necessary and desirable.

Secondly, it must be only for any of the purposes falling within sub-s. (a), (b), (ba), or (c) to sub-s. (1) of s. 320 of NLC.

A priori therefore, when addressing the question whether a Registrar's Caveat (which had already been entered) need to be continued or whether it had to be cancelled, the Registrar was to similarly apply his or her mind as to whether the Registrar's Caveat was necessary and desirable and was strictly for the purposes spelt out in the above provisions of the NLC.

[22] The approach to be taken by the Registrar when an application is received to enter a Registrar's Caveat, was postulated by Dzaiddin J (as His Lordship then was) in *Lim Ah Hun v. Pendaftar Hakmilik Tanah, Pulau Pinang & Anor* [1990] 2 CLJ 640; [1990] 2 CLJ (Rep) 369 in the following terms:

> ... before the Registrar exercises his power of entry, he must be satisfied objectively with the information and/or facts supplied to him by any proper applicant.

In *Pendaftar Hakmilik Negeri Kedah v. Overseas-Chinese Banking Corp Ltd* [1991] 2 CLJ 1105; [1991] 1 CLJ (Rep) 351, the Supreme Court, per Gunn Chit Tuan SCJ (delivering the judgment of the court) had also ruled as follows:

> In this case, the Registrar had decided to enter the Registrar's Caveat against the land in question without all those information on several material matters which need to be considered by him before he decided to enter the Registrar's Caveat. He had therefore not exercised

A his discretionary powers according to and within the limits set out in the provision of s. 320(1)(ba) of the NLC because he had failed to take relevant considerations into account. As he had not acted judiciously or reasonably within the ambit and scope of that section, he has therefore exceeded his powers under that section and has therefore acted *ultra vires* and his act was therefore invalid.

B

[23] As noted by me earlier in this decision, the Registrar had to be satisfied objectively that the entry or continuance of the Registrar's Caveat (as the case maybe) was necessary and desirable and his or her discretionary powers under ss. 320 or 321 NLC had to be judiciously and reasonably exercised, taking into consideration all relevant information and material.

C

[24] It is not enough therefore, as we have here, for the Registrar to merely state that the Registrar's Caveat was entered at the request of the 'police" and since the 'police' had not withdrawn the request, the 2nd respondent was not in a position to cancel the Registrar's Caveat. (See para. 8 of encl. 4 - 'responden menegaskan bahawa tiada sebarang permohonan bertulis daripada pihak polis untuk membatalkan Kaveat Pendaftar tersebut').

D

E The 2nd respondent's role or application of mind upon a request to enter a Registrar's Caveat or upon a request to cancel the Registrar's Caveat by an affected party (like the registered owner of the land here) is therefore not a mechanical one at all. There must be an objective assessment of all relevant information and/or facts supplied by the relevant applicant for such a caveat to be entered or for such caveat to be cancelled.

F

[25] This is where, I hold that the 2nd respondent clearly erred. There was no such objective evaluation of relevant considerations by the 2nd respondent.

G

Senior Federal Counsel for the 2nd respondent found it easy to leave it to the court to decide whether the Registrar's Caveat should be maintained and stated that the 2nd respondent will accept and be bound to whatever directions or rulings the court would make in the matter.

H **[26]** The court will therefore have to in the circumstances enquire whether, firstly, the entry of the Registrar's Caveat was sustainable at all and secondly, whether the 2nd respondent erred on facts and in law, when the application to cancel the Registrar's Caveat was rejected despite the additional information and details being made available by the applicant to the 2nd respondent.

I

Registrar's Caveat Not Sustainable In Law

[27] My first observation is that s. 320(1)(a) - for the prevention of fraud or improper dealing, must be read to mean 'fraud in respect of any dealing' or some 'improper dealing' in respect of the land itself. "Dealing' in the context of the NLC has a special meaning; see the definition of that word in s. 5 of the NLC. It relates to instruments, forms, process of registration etc. related to transfers, charges, leases and tenancies, easements, liens and caveats on land.

It was not intended to be available for all and diverse kinds of fraud or cheating in its widest compass, as was canvassed by counsel for the 1st respondent here in this instant case. The scope and availability of that sub-s. (a) has to be read in the context of the protective purpose of that provision in the NLC, that is s. 320 read as a whole. It follows therefore that the provisions have to be construed in a restricted manner.

[28] In this instant case - the declared ground for entry of the Registrar's Caveat - was, and I repeat it here "... Pengaduan ... oleh Khoo Ah Soon berkaitan satu kes penipuan dan pemalsuan afidavit dalam proses tuntutan kes sivil."

Obviously, what was being claimed to be the basis for the entry of the Registrar's Caveat is "penipuan dan pemalsuan afidavit" related to a civil proceeding. There arose no question in my mind at all that the alleged or claimed 'cheating' or falsification' was related to an 'affidavit' (should be read conjunctively). By no stretch of argument can this, in my holding, qualify to be 'for the prevention of fraud or improper dealing'.

[29] Further, this becomes more obvious from a closer examination of the contents of the thirteen (13) year old 'Police Report" (Report No. 1046/97) lodged by the 1st respondent. The 1st respondent's complaint was basically that allegedly when a restraining order in the 1994 Civil Suit was in force, certain parties including SBR had entered into a Sale & Purchase Agreement for the disposal of the said lots and proceeded to complete the sale. (See paras. 2 and 3 of the "Police Report" of the 1st respondent. At para. 6 of the said report the 1st respondent goes on to state: "According to all the above facts I believe that I have been cheated and the properties have been transferred to a third party. I humbly request the police to immediately stop any further dealings on the properties and investigate my request accordingly and to bring all the culprits to justice".

A **Registrar's Caveat Not Sustainable On Facts**

[30] Two important facts cannot be overlooked here. Firstly, Abdul Hamid Muhamad J (as His Lordship then was) had in the 1994 Civil Suit found as a fact that the 1st respondent was not the 'actual purchaser' and that "He was a broker, nothing else". Secondly, the 1997 Civil Suit instituted by the 1st respondent was against all the parties the 1st respondent had claimed to have 'cheated' him. As earlier highlighted in this judgment, SBR and the applicant had successfully obtained on 4 March 1998 an order of court order to strike out the writ and claim against them. The 1st respondent did not appeal at all against this striking out of this 1997 Civil Suit.

(The 2010 attempt by the 1st respondent to reinstate the 1997 Civil Suit had also been dismissed by the court. There is an appeal against this decision but there was no judicially ordered 'stay' or any kind of 'restraining' orders in effect currently against or binding on the applicant).

[31] Even if all of the related information and developments pertaining to the 1994 Civil Suit and/or 1997 Civil Suit might not have been available to the 2nd respondent when the Registrar's Caveat was entered, there is no denying the fact that such information and details were certainly available and made known to the 2nd respondent when the applicant applied to have the Registrar's Caveat cancelled (See: Chargee's Solicitor letter of 25 June 2010 attached on exh. AG7 in encl. 2).

[32] It is abundantly clear to me therefore that the 2nd respondent did not apply his or her mind to all relevant considerations in refusing to cancel the said caveat upon the application of the applicant. If the 2nd respondent had done so by asking the right questions and weighing the facts presented, the Registrar's Caveat would and ought to have been cancelled as there was no justification either in law or on facts to continue and retain the same as against the said lots.

Dilatory Action Of The Police And Justice Of The Case

[33] There is one remaining issue that demands some attention. Although this was an appeal against the 2nd respondent's refusal to cancel the Registrar's Caveat, it must be remembered that the Registrar's Caveat was entered upon the request of "Jabatan Siasatan Jenayah Komersial, Kontingen Polis, Pulau Pinang" in June 2010. The request from the 'police' seemingly relied on a thirteen (13) year old Police Report lodged by the 1st respondent as the basis for the application for the Registrar's Caveat to be entered against the applicant's property.

[34] Apart from the obvious delay in expeditiously completing the investigations here, it was a sad reflection of the attitude of the relevant Police Department that despite requests, no satisfactory explanation was forthcoming whether there were any new leads in the investigations on this old report or what was the present status of those investigations being undertaken by the police.

The only response was vague and, in my view, wholly evasive – 'masih dalam siasatan'. Even if there was some evidence to support the said complaint of the existence of some elements of 'cheating' in a land dealing that is, this authority vested with the duty of protecting and enforcing laws for the rakyat, should have been more forthright with the 2nd respondent (and now to the court) and should have offered some plausible explanation rather than be merely dismissive with a general statement which failed, in my assessment, to appreciate the seriousness surrounding the steps initiated by the police.

What was at stake was the rights of a land owner and it was not unreasonable for the party affected by such administrative action to expect the police to act fairly in discharging their duties and obligations.

[35] The 2nd respondent in turn took the position, wrong as it was as I have ruled earlier, to state that since the 'police' had not withdrawn the request for the Registrar's Caveat, the 2nd respondent was obliged to maintain it over the said lots of land of the applicant.

[36] The court, I firmly believe, has in any event, an added duty to enquire where the justice of the case as between parties lay and make appropriate orders to that end. Here was a case of a registered owner of the said lots of land being still further hampered from dealing with or exploiting his property after protracted litigations revolving around the land being concluded and disposed of. A serious impediment had been brought about by the Registrar's Caveat impinging on the fundamental rights of the applicant over his property (art. 13 of the Federal Constitution).

[37] On the other side, we have the 'police' who not only have delayed completion of the investigation into the 1st respondent's Police Report for thirteen (13) years but now seem to take a nonchalant attitude by maintaining that the investigations are purportedly still ongoing. Can this be allowed to persist? Can such rather lackadaisical conduct on the part of a responsible agency for the protection of the citizen's rights, be overlooked by the court when an aggrieved party turns to this court for intervention?

A Registrar's Caveat over a piece of land has similar serious consequences like a court-issued injunction or restraining order binding on a proprietor of the land from freely dealing with his capital - the landed property. As the process of securing the entry of a Registrar's Caveat under the NLC is supra-judicial (or as some may prefer to term it - extra-judicial), the court must all the more jealously ensure that there is no misuse or even abuse of this measure by any party.

[38] I therefore further hold that, in any event, (that is, notwithstanding my holding that the 2nd respondent was wrong in not cancelling the Registrar's Caveat as aforesaid), when on the scales of justice the court considers the interest of conflicting parties, the balance of justice definitely tilts in favour of the applicant in all the circumstances of this case, to have the Registrar's Caveat entered against the 22 lots of land forthwith cancelled.

Conclusion

[39] I therefore find no valid basis in law or any justification on the facts before the court, for the Registrar's Caveat to be maintained. I allow the applicant's appeal and make the following orders:

Orders

(i) The Registrar's Caveat lodged *vide* Presentation No. 541/2010 in respect of the properties known as Lot PM7 GM 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 196, 253, 96 Mukim 6, GM 294, 648, 649, 650, 651 and 660, Mukim 7, for Lots No. 111, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 309, 424 and 425, Mukim 6, Lots No. 157, 1276, 1277, 1278, 1279, & 1297, Mukim 7, Daerah Seberang Perai Selatan (hereinafter referred to as "the said Properties") be removed forthwith.

(ii) The 1st respondent abovenamed, Khoo Ah Soon, his agents and/or servants is restrained forthwith from lodging or causing to be lodged any further caveat on the said Properties; and

(iii) The 1st and 2nd respondents jointly pay the applicant the costs of this application.

The cost to be paid is fixed at RM10,000.